IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 37 OF 2004

MR. JOSE JACOME SALDANHA AND ANR., ...Appellants

Versus

MR.JAGANATH MORASKAR(SIN.DEC.) THROUGH L.RS., ...Respondents

Mr. R. B. D'Sa, advocate for the appellants.

Coram:- R. M. LODHA, J.

Date:- 17th August, 2005

P.C.

Heard Mr. D'Sa, learned counsel for the appellants and perused the order dated 4th June, 2004, passed by the Civil Judge, Senior Division, Mapusa, rejecting the appellants' application for grant of temporary injunction during the pendency of the suit. The appellants are the original plaintiffs. Though, during the course of motion hearing before me the learned counsel for the plaintiffs submitted that the plaintiffs' claim is founded on easement of necessity, upon perusal of paragrah 10 of the plaint, it does not seem to be so. Rather, the plaintiffs' case appears to be based on easement by way of prescription. Besides that, what apears from the available material is that the subject well is situated in the defendants' property and that the plaintiffs seem to be staying at a distant place from the subject well. The access allegedly claimed by the plaintiffs is also not prima facie established. As a matter of fact, the trial Court found that there is no reliable material prima facie establishing the plaintiffs' claim of easement.

Having considered the impugned Order, it cannot be said that the trial Court committed any error in exercise of its discretion in rejecting the plaintiffs' application for grant of temporary injunction.

The Appeal From Order does not deserve to be entertained and is dismissed in limine.

R. M. LODHA, J.